

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT&T WIRELESS SERVICES, INC.,

Plaintiff,

v.

MORGAN & FINNEGAN, L.L.P.,

Defendant.

Case No. C03-0161L

ORDER GRANTING IN PART
DEFENDANT'S MOTION IN LIMINE
REGARDING AFFIRMATIVE DEFENSES

This matter comes before the Court on "Plaintiff's Motion in Limine No. 4 (to Exclude Defendant's Reliance on the Affirmative Defenses of Waiver, Acquiescence, Estoppel or Laches)." Defendant acknowledges that the evidence adduced in discovery will not support its affirmative defenses of acquiescence or laches and, therefore, does not oppose the exclusion of evidence regarding those defenses. Defendant maintains, however, that there are factual issues regarding the validity of its waiver and estoppel defenses that must be resolved by the jury.¹

Plaintiff argues that the affirmative defenses of waiver and estoppel fail as a matter of law because defendant will not be able to prove an unambiguous intent to waive a right or an

¹ The Court finds that these issues can be resolved on the papers submitted by the parties. Defendant's request for oral argument is therefore DENIED.

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1 action on which the other party could reasonably rely. Plaintiff's motion in limine does not seek
2 to exclude specific evidence, but is more akin to an untimely motion for summary judgment. In
3 addition, if defendant is able to prove that plaintiff countermanded its original order that Morgan
4 & Finnegan file the AWS 562 patent application, the jury could reasonably conclude that
5 plaintiff waived any right it may have had to enforce the original order and/or is equitably
6 estopped from enforcing the original order.²

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8 Because defendant does not contest dismissal of its acquiescence and laches
9 defenses, plaintiff's motion to exclude evidence thereof is GRANTED. Plaintiff's motion to
10 exclude evidence regarding the affirmative defenses of waiver and estoppel is DENIED.

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13 DATED this 25th day of April, 2005.

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16 Robert S. Lasnik
17 United States District Judge
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24 ² For purposes of this motion, the Court need not determine whether defendant will be able to
25 assert and/or prove equitable estoppel on behalf of persons who are not parties to this litigation and
26 whose reliance has not been addressed.